



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: MCA Research Corporation

File: B-276865

Date: July 29, 1997

R. Wood Miles for the protester.

Russell P. Spindler, Esq., Department of the Navy, for the agency.

Robert C. Arsenoff, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency is not required to structure solicitation requirements to eliminate competitive advantages allegedly possessed by incumbent contractor where advantages did not result from any unfair government action.
 2. Protest that solicitation requirement for the submission of resumes for certain key personnel is restrictive of competition is denied where record establishes that the requirement was reasonably designed to ensure that the agency's minimum needs would be met.
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DECISION

MCA Research Corporation protests as unduly restrictive of competition certain key personnel requirements under request for proposals (RFP) No. N68936-97-R-0057, issued by the Department of the Navy for weapons test support services at the Echo Range in China Lake, California.

We deny the protest.

Section M of the RFP provides that award will be made to the offeror whose proposal represents the best value to the government "from a technical/management and cost standpoint." The four evaluation factors, listed in descending order of performance are management, past performance, technical, and cost. One of the three subfactors under the management factor is "Qualifications of key personnel and their availability."

Key personnel were identified as follows:

Program Manager
Deputy Program Manager
Second Level Supervisors

Administrative Personnel Responsible for Safety
Administrative Personnel Responsible for Security
Administrative Personnel Responsible for Government Property
Head of Engineering Staff¹

Resumes and letters of commitment were required to be submitted for all proposed key personnel. In addition, offerors were required to describe their plans for hiring and retaining a qualified work force with the following proviso:

The Government anticipates that at least 80 percent of the incumbent employees will be retained by the follow-on contractor. If the offeror does not plan on hiring the current work force, then the plan on acquiring a work force needs to address how the offeror will select, relocate, and train the work force so they can assume responsibility for contract performance within the Phase-in period.²

MCA alleges that it learned that a former Echo Range manager had convinced the incumbent key personnel to go with one firm as a consolidated unit, thus effectively limiting full and open competition because other bidders would have to include resumes of non-incumbents. The protester further asserts that there is a prevailing attitude against "outsiders" in the China Lake area, thus potentially limiting the ability of non-incumbent key personnel to function at an optimal level. In addition, the protester objects to the identification of three administrative tracking positions as "key positions," asserting that all three positions are currently held by one person, and further objecting that the inclusion of administrative support positions as "key personnel" is, in and of itself, highly unusual. The protester concludes that to list three "key" administrative positions currently performed by one person indicates that this solicitation requirement is "job protection" for that individual.

MCA asserts that, in order to enhance competition, the solicitation should be amended to delete the resume requirements for all personnel other than the program manager and section M should be revised to reflect the deletion of the resume requirements.

In seeking competition, an agency is not required to construct its procurements in a manner that neutralizes the competitive advantage that some potential offerors (including incumbent contractors) may have over others by virtue of their own particular circumstances where the advantages did not result from unfair action on

¹A note followed the list stating that: "Two or more functions may be performed by one person."

²A 30-day phase-in plan was one of the elements included in the third subfactor under the management factor.

the part of the government. See Group Technologies Corp.; Electrospace Sys., Inc., B-250699 et al., Feb. 17, 1993, 93-1 CPD ¶ 150 at 13. Agencies are required to specify their needs in a manner designed to promote full and open competition and thus may include restrictive requirements only to the extent necessary to satisfy their minimum needs; we will not question an agency's determination of its minimum needs unless that determination has no reasonable basis. Innovative Refrigeration Concepts, B-272370, Sept. 30, 1996, 96-2 CPD ¶ 127 at 3.

Neither the alleged actions of the former, unnamed Echo Range manager (who is not a government employee), nor the alleged characteristics of the China Lake community constitute government action, much less unfair government action. Accordingly, even if these alleged circumstances provided the incumbent contractor with some type of competitive advantage, the agency is not required to take that into account in designing a solicitation that meets its minimum needs. Mortara Instrument, Inc., B-272461, Oct. 18, 1996, 96-2 CPD ¶ 212 at 6.

With respect to two of the three employment categories which MCA specifically challenges as not requiring resumes--administrative personnel responsible for safety and security--the agency points out that the contract imposes very stringent guidelines with respect to range safety and security, as would be expected in a contract to support a major military test range. The Navy reports that experience has shown that the quality of a contractor's performance in these areas is directly related to the importance placed upon the staffing of the personnel assigned responsibilities in these areas. With respect to the third employment category--administrative personnel responsible for government property--the Navy reports that it imposed the resume requirement because the amount and value of government furnished property (GFP) associated with the contract demonstrated the importance of having highly qualified and motivated personnel responsible for managing this aspect of the contract.

MCA concedes that the contract involves a significant amount of GFP and provides no explanation as to why the resume requirements are not necessary to ensure that the agency's minimum needs are met, merely noting that the incumbent presently has one individual performing in all three capacities and speculating that the stated expectation of the reemployment of 80 percent of the incumbent employees on the follow-on contract obviates the need for resumes in the challenged employment categories. As noted above, the solicitation specifically provides that one individual could perform more than one key personnel role. Under the terms of the solicitation, contractors are free to propose varying solutions as to how many and which personnel are required to perform in key personnel roles. The agency has provided a reasonable basis for including both the key personnel and resume

requirements in order to ensure that its minimum needs are satisfied and MCA's observations provide no cogent reason to conclude otherwise.

The protest is denied.

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